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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for Group II, Import Administration

DATE: December 1, 2003

SUBJECT: Issues and Decision Memorandum for the Investigation of Prestressed Concrete Steel Wire Strand from Thailand

Summary

This memorandum addresses issues briefed or otherwise commented on in the above-referenced proceeding. Following is a list of the issues briefed by interested parties and an analysis of the comments of the interested parties and our recommendations for each of the issues.

Background

On July 10, 2003, the Department of Commerce (the Department) issued the preliminary determination in the investigation of prestressed concrete steel wire strand (PC strand) from Thailand.¹ The period of investigation (POI) is January 1, 2002, through December 31, 2002. The respondent in this investigation is Siam Industrial Wire Co., Ltd. and Cementhai SCT USA (collectively, SIW). The petitioners in this case are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp. (collectively, the petitioners).

We received case briefs from the respondent and the petitioners. We received a rebuttal brief from the respondent. A public hearing was held on November 3, 2003.

¹ See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand, 68 FR 42373 (July 17, 2003) (Preliminary Determination).

Issues

- Comment 1: Allocation of Conversion Costs
- Comment 2: Treatment of SIW's Home Market Back-to-Back Sales
- Comment 3: Whether to Allow a Constructed Export Price Offset
- Comment 4: Corrections to SIW's U.S. sales
- Comment 5: Corrections to SIW's Home Market Sales
- Comment 6: Corrections to Errors Contained in the Preliminary Margin Calculation Program

Discussion of Issues

Comment 1 - Allocation of Conversion Costs

SIW asserts that the Department should use its reported CONNUM-specific costs which it claims properly account for product differences. SIW explains that it does not maintain its production costs in a manner such that its product-specific costs could be transposed directly into CONNUM-specific costs. Further, it contends that it only had costs that were specific to PC strand (*i.e.*, uncovered) and PE extruded (*i.e.*, covered) strand and reiterates its claim made at verification, that differences in grade are not meaningful; however, diameter does affect per-unit production costs. SIW explains that it allocated its conversion costs (direct labor, variable and fixed overheads) based on the relative output efficiency associated with each diameter range specified by the Department's questionnaire. This allocation was based on SIW's accounting records maintained in the ordinary course of business. SIW points out that the Department did not use this allocation in the preliminary determination but instead reallocated costs based on weight. The allocation was explained in full at verification, and the Department found the data on which the allocations were based to be reasonable. Therefore, SIW asserts that the Department should accept its conversion cost allocations and not revise them in the final determination.

The petitioner did not comment on this issue.

Department's Position: SIW departed from its normal accounting records in allocating labor and overhead costs to specific dimensions of PC strand products produced. In departing from its normal books and records, SIW claimed that it relied on engineering information to determine the adjustment ratios. In our supplemental questionnaire issued on June 13, 2003, we requested that SIW provide supporting information for the engineering factors used. However, SIW failed to provide adequate support and explanation for the derivation of these adjustment factors. As such, for the preliminary determination, we did not rely on the production engineering information used by SIW to adjust the standard labor and overhead costs maintained in its normal books and records and instead, relied on facts otherwise available. SIW did provide the requested explanation for the derivation of the adjustment factors and supporting information for the engineering factors used in a supplemental

response dated July 25, 2003. We verified the production engineering information supplied by SIW and reviewed the derivation of the adjustment factors which were used to report CONNUM-specific costs and have determined that adjustment factors were reasonable. See Memorandum from James Balog, Accountant, to Neal M. Halper, Office of Accounting, Re: Verification Report on the Cost of Production and Constructed Value Data Submitted by Siam Industrial Wire Co., Ltd. (SIW) (Cost Verification Report) dated October 10, 2003, at 12. Therefore, no adjustment is necessary for the final determination.

Comment 2 - Treatment of SIW's Home Market Back-to-Back Sales

SIW had a limited number of sales to an affiliated reseller, which were then resold to an unaffiliated dealer, and then, finally, resold to an unaffiliated end-user (back-to-back sales). In the case of such sales, SIW reported the sale to the affiliated reseller and subsequently, at the Department's request for the sales to the end-user, the affiliated reseller's sales to its dealer. The petitioners argue that the Department should apply adverse facts available in analyzing SIW's home market back-to-back sales because SIW has failed to provide the Department with the correct sales.

The petitioners argue that the statute and case precedent establish that the Department must calculate normal value based on the price at which the foreign like product is sold. They believe that, in this case, that price is the price to the unaffiliated end-user. The petitioners cite Industrial Phosphoric Acid from Belgium; Preliminary Results of the Antidumping Duty Administrative Review, 64 FR 24574 (May 7, 1999) (Industrial Phosphoric Acid from Belgium), in which the Department analyzed sales to end-users as opposed to sales to an affiliated reseller, where: the merchandise was shipped directly from the manufacturer to the end-user customer, 2) the direct shipment of merchandise from the manufacturer to the end-user customer was the customary commercial channel between the parties involved; and 3) the function of the affiliate was limited to that of a processor of sales-related documentation and a communications link with the end-user. The petitioners believe that, even though this analysis was done with respect to U.S. sales, it should be equally applied to home market sales.

The petitioners also argue that the only genuine sales completed with respect to SIW's back-to-back sales are those to the unaffiliated end-user for six reasons: 1) SIW negotiates its sales directly with its end-user customers, 2) SIW confirms the final price with the end-user customers prior to the end-user customers placing the order, 3) SIW has exclusive control over changes to the price and quantity of sales to the end-user customers, 4) SIW delivers the PC strand directly to its end-user customers, 5) SIW's affiliate and its dealers are not substantively involved in the sales process and provide only minimal order processing services, and 6) SIW has placed documentation on the record which provides evidence that the only sale completed by SIW is with its end-user customers.

With regard to point 6 above, the petitioners elaborate, stating that SIW has placed on the record copies of sample documentation that SIW asserts corresponded to a sale "through" its affiliate. The petitioners also point out that the respondent called the documentation an invoice, and later, stated that the correct translation for the title of the document was an order paper. Finally, the petitioners argue

that the document appears to be an “invoice/order paper” from SIW to the end-user, not SIW to the affiliate. The petitioners contend that all of these facts indicate that no “sale” existed between SIW and its affiliate.

The petitioners further assert that the record indicates that SIW has access to the information concerning the prices paid by end-user customers because: 1) statements by SIW officials at verification confirm that SIW negotiates the price with its end-user customers at the outset of the transaction, 2) statements obtained by the Department at verification from dealers and end-user customers confirm that SIW negotiates the final price with the end-user customers, and 3) information obtained by the Department at verification confirms that dealers do not quote a final price to the end-user customers that differs from the price quoted by SIW.

Finally the petitioners reiterate that the Department should apply adverse facts available to SIW’s back-to-back sales because the Department has made multiple requests of SIW that it submit information on end-user prices for its back-to-back sales. Because SIW failed to report the requested information, the application of adverse facts available is required pursuant to the statute. The petitioners believe that in making an adverse inference against SIW, the Department should rely upon that company’s business proprietary information as “other information placed on the record.” See section 776(b)(4) of the Act. The petitioners argue that because this information is on the record and has been verified, the Department should rely on the highest rate calculated from that information in applying adverse facts available.

SIW contends it properly reported the correct sales for the calculation of normal value - its sales to its affiliated reseller, which passed the arm’s length test. SIW cites the Department’s questionnaire at B.II, footnote 1, which states that “if you believe your sales of the foreign-like product to an affiliated reseller were arm’s length transactions, you may report your sales to that affiliate rather than that affiliate’s resales to unaffiliated customers.” In addition, SIW notes that the Department confirmed that the sales to the affiliate were arm’s length transactions in its preliminary determination. See Preliminary Determination at 42375. SIW believes that the arm’s length test confirms that there was a bargained for exchange that constituted a sale. SIW states that sales to affiliates, by nature, are suspected of not being bargained for, which is why the arm’s length test is necessary. The arm’s length test illustrates that these sales are comparable to bargained for sales to unaffiliated parties. Therefore, SIW states that if a sale to an affiliate passes the arm’s length test, it is presumed to be a bargained for exchange. With regard to the petitioners’ cite to the Department’s decision in Industrial Phosphoric Acid from Belgium, SIW argues that the case is not relevant to this investigation because it involves U.S. sales through an affiliated sales agent and the Department’s former indirect export price (EP) sales analysis, which is no longer in effect. According to SIW, this case bears no relevance to SIW’s back-to-back home market sales as it deals with a different section of the statute and an outdated policy.

SIW then asserts that the petitioners’ argument that SIW has access to the sales data is incorrect. SIW argues that it has provided complete data to the best of its ability. It reiterates that the dealers’ final

terms of sale and the records of end-user customer payments to dealers are not available to SIW or its affiliated reseller, as explained in the questionnaire responses and at verification. SIW states that it cannot compel unrelated companies to provide proprietary information and that the Department cannot penalize SIW for failure to submit information that it cannot provide.

SIW then states that if the Department elects to use facts available, despite the clear and compelling reasons not to, then the Department should at most adjust the home market selling price upwards by the amount of the cash discount for sales made by its affiliated reseller to dealers under cash terms because if the end-user pays in cash it receives a cash discount. According to SIW, the price should not be adjusted at all for sales made on credit terms.

Department's Position: Consistent with our preliminary determination, we find that SIW's sales to its affiliated reseller are appropriate for use in the calculation of normal value. According to the Department's regulations at 19 CFR 351.403(d), "if an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section." SIW's sales to its affiliated reseller pass the arm's length test pursuant to 19 CFR 351.403(c), thereby confirming that these sales are comparable to sales to unaffiliated parties.

Although the sales to the affiliated reseller pass the arm's length test, the petitioners argue that the only sale or "bargained for exchange" in SIW's back-to-back sales process is that between SIW and the end-user customer. The information on the record indicates that SIW controls the terms of sale to the end-user, with the exception of the payment terms offered by the dealer. However, we believe the petitioners' citation of Industrial Phosphoric Acid from Belgium in support of their argument that the Department should use the sales to the end-users instead of the sales to the affiliated reseller is misplaced. In that case, the Department used its former indirect EP analysis to determine that the respondent's sales through its affiliated agent to end-users in the United States were EP sales. According to the Department's regulations, the Department must consider only sales to unaffiliated parties in its analysis of U.S. sales, whereas in the analysis of home market sales, the Department may consider sales to an affiliate if those sales are comparable to sales to unaffiliated parties. See 19 CFR 351.402 and 403(c),(d). Because this sale is comparable to sales to unaffiliated parties, it may still be used in calculating normal value.

As the petitioners have pointed out, information on the record clearly demonstrates that SIW negotiates the price and quantity with the end-user customers and arranges for direct delivery to the end-user customers. In addition, at the time of delivery, title passes contemporaneously from SIW to its affiliated

reseller to the dealer and finally to the end-user customer. However, despite the level of control that SIW has over the sale to the end-user, the sale to the affiliated reseller involves both a transfer of title and consideration. See, e.g., AK Steel Corporation v. United States, 226 F.3d 1361, 1371 (Fed. Cir. 2000), citing NSK Ltd. v. United States, 115 F.3d 965 (Fed. Cir. 1997). The sales documentation on the record demonstrates that a sales transaction between SIW and the affiliated reseller occurred, as SIW issues an invoice to the reseller and receives payment. Thus a contract for sale existed between SIW and its affiliate. No such contract existed between SIW and the end-user customers which purchased through this channel of distribution. Original invoices and sales documentation examined at verification did not indicate that any invoices were sent directly to the dealer's customers.

Finally, we disagree with the petitioners' argument that the Department should apply adverse facts available to the back-to-back sales. SIW did, in fact, provide the information necessary for the calculation of normal value, and we confirmed at verification that SIW does not have access to the dealers' sales documentation and payment records, that it does not keep any systematic records of the prices and quantities agreed to with the end-user, and that any such prices do not flow into its audited financial statements or tax returns. Therefore we conclude that SIW cooperated to the best of its ability in providing the information requested by the Department, and adverse facts available should not be applied to the back-to-back sales.

Based on the totality of facts, we find it is reasonable to conclude, as we did in the preliminary determination, that SIW's sales to its affiliated reseller are comparable to sales to unaffiliated parties, and therefore, are appropriate for use in calculation of normal value in the final determination of this investigation. However, we note that, under certain factual scenarios, "back-to-back" sales transactions involving affiliated resellers may require closer scrutiny to ensure that they involve bona fide transactions. Due to the complex nature of SIW's sales through the affiliated reseller and unaffiliated dealers to end-users, we will again vigorously examine the back-to-back sales in the first review should the International Trade Commission make an affirmative injury determination and an antidumping duty order is issued.

Comment 3 - Whether to Allow a Constructed Export Price Offset

The petitioners argue that the Department should not allow SIW's constructed export price (CEP) offset adjustment in the Final Determination. They state that the information on the record does not support a finding of different levels of trade. The petitioners believe that SCT (Thailand) provides significant services such as sales forecasting, strategic planning, and marketing personnel activities on behalf of U.S. sales and that these services are reflected in the adjusted CEP. They state that, therefore, the Department should either deduct an amount for the expenses incurred by SCT (Thailand) in determining the adjusted CEP, or revise the level of trade analysis to reflect all of the selling functions that are included in the adjusted CEP.

Furthermore, the petitioners argue that the information provided during verification concerning SCT USA illustrates that SCT USA does not have the resources to provide significant selling functions for U.S. sales. The petitioners reference the Department's verification report where the Department states the number of employees at SCT USA and the number of products, other than PC strand, that SCT USA sells, as evidence of this. The petitioners state that because SCT USA does not have the resources to provide extensive services, SIW and SCT (Thailand) provide almost all of the selling functions for sales in the U.S. They argue that SIW provides no additional selling functions for its home market sales; therefore, the level of trade at which the sales are made in both markets are the same.

Finally, the petitioners state that to the extent that the Department does not treat sales by SIW through its affiliate and dealers to end-users as direct sales by SIW, and treats them instead as sales to either its affiliated reseller or the dealers, the Department should, at a minimum, not grant a CEP offset for home market sales made through its affiliated reseller. The petitioners argue that none of SIW's selling functions are directed at the affiliate or dealers; rather, the selling functions are directed at end-user customers. They state that because SIW provided prices charged to the dealers rather than the end-customers there is no basis for a CEP offset.

SIW believes that the Department should allow SIW's CEP offset adjustment, as was done in the Preliminary Determination. SIW rebuts the petitioners argument stating that it does provide more selling functions in the home market, such as 1) employing direct sales and market personnel, 2) conducting creditworthiness analysis of customers, 3) conducting inventory maintenance and just in time delivery, 4) offering and processing rebates and cash discounts, and 5) providing technical services to end-user customers.

SIW then points out that for back-to-back sales it provides selling functions for its affiliated reseller, such as, 1) coordinating sales and marketing with the affiliated reseller and the dealers, 2) jointly working with the affiliated reseller's personnel on sales forecasting, strategic planning, and marketing research aimed at the dealers and the end-user customers, 3) jointly working with the affiliated reseller's personnel to present to the dealers on how to use and sell SIW products, 4) providing rebates to the affiliated reseller, who in turn provides rebates to the dealers, and 5) providing technical services to end-user customers and dealers.

Furthermore, SIW argues that SCT USA provides significant selling functions with regard to U.S. sales, such as, 1) contacting the customers and conducting direct marketing efforts with them, 2) conducting creditworthiness analysis of U.S. customers and charging interest revenue to customers with bad payment records, 3) collecting payments and dealing with bad debt, 4) handling claims and other product-related technical matters, 5) performing inventory maintenance and just in time delivery, and 6) offer and process rebates and discounts. SIW reasons that the number of SCT USA personnel is not relevant. SIW states that given the small quantity of PC strand sales in the United States one person could handle the responsibility while calling on other employees for help occasionally. SIW also points out that the Department confirmed SCT USA's role in U.S. sales during verification.

Department's Position: At verification, we confirmed that SIW does provide significant selling functions for home market sales including sales forecasting, strategic and economic planning, sales promotion, employing sales and marketing personnel, inventory maintenance, arranging freight and delivery, providing discounts and rebates, and providing on-site engineering and technical services to end-user customers. See Memorandum from Carol Henninger, International Trade Compliance Analyst, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Siam Industrial Wire Co., Ltd. and Cementhai SCT USA in the Investigation of Prestressed Concrete Steel Wire Strand from Thailand (Sales Verification Report) dated October 16, 2003, at 7, 13 and 18. SIW provides these services for both its direct sales to end-user customers and its sales through its affiliate and dealers to end-user customers.

With regard to SIW's back-to-back sales, SIW stated that "other than processing the paperwork associated with orders and payment, and the assumption of credit risks, {the affiliate} and the dealers do not have any selling functions for the sale of PC strand." See SIW's June 10, 2003 questionnaire response at 6. At verification, we confirmed that the affiliated reseller provides services for order input and processing and also works jointly with SIW on sales forecasting and sales promotion. In addition, the affiliated reseller works jointly with SIW and the dealers to coordinate the sales, provide information on how to use and sell SIW products, and provide rebates. See Sales Verification Report at 8-10. Because SIW and the affiliated reseller coordinate their selling functions for the back-to-back sales, we find that ultimately these selling functions are directed at the end-user. The affiliated reseller and dealers agree to the sales transactions with SIW with the knowledge that SIW is providing the same selling functions for these sales as it does for direct sales. Therefore, we consider SIW's selling functions to be applicable to both its direct and back-to-back sales in the home market and find that the sales to the affiliated reseller do not warrant a separate level of trade.

With regard to the petitioners' statement that SCT USA did not have the resources to provide its reported selling functions for SIW's U.S. sales and that SCT provided more selling functions for these sales in Thailand, we confirmed at verification that SCT's selling functions were limited to assisting with marketing information, checking the availability of the merchandise, order input and processing, confirming the delivery schedule, and arranging for delivery to the port and customs clearance in Thailand. See Sales Verification Report at 6. At the CEP verification, we confirmed that SCT USA provided significant selling functions for sales to U.S. customers including sales forecasting, inventory maintenance, paying commissions, checking the creditworthiness of customers, handling claims, and providing freight and delivery. SCT USA's selling expenses are deducted from U.S. price and therefore, are not considered in the level of trade analysis. However, we note that many of the selling functions SIW provides in the home market are similar to those we have backed out on the U.S. side.

At verification, we confirmed that SIW provides more selling functions for its home market sales than for its sales to SCT USA. Therefore, we find that the home market sales are at a more advanced level of trade and consistent with our preliminary determination, we are granting the CEP offset adjustment.

Comment 4 - Corrections to SIW's U.S. sales database

The petitioners argue that we should make the following five corrections with respect to SIW's U.S. sales database:

1) Cost of End-fittings

The petitioners argue that the Department should include the cost of end fittings in the U.S. packing cost for U.S. sales. The petitioners state that the end fitting is not part of the coil because the end-fitting is attached to the coil during the packing process and not during the stranding process. They state that a unit cost can be calculated because SIW provided a cost and weight for the end-fittings in its June 10, 2003, supplemental questionnaire response and at verification.

The respondent did not rebut the argument.

Department's Position: We agree with the petitioners. At verification, we confirmed that SIW adds end-fittings during the packing process to all PC strand coils destined for the United States. These end-fittings are used by customers to hold the end of the coil in order to stretch out the strand and are not suitable for use as an anchor in tensioning operations. Because the end-fittings are added to the strand during the packing process and are not an integral part of the product, we consider them to be additional packing costs and have calculated a per unit cost based on the cost per fitting and standard weight per coil provided by SIW. We added the per unit cost for end-fittings to the U.S. packing costs reported by SIW.

2) U.S. Movement Charges

The petitioners argue that the Department should correct SIW's understatement of U.S. movement charges that were discovered at verification. The petitioners believe that SIW understated movement charges in two respects. First, SIW erroneously relied on gross weight rather than the net weight in calculating certain per-unit movement costs. The petitioners point out that the Department noted at verification that international freight and other U.S. transportation costs were calculated based on gross weight. The petitioners argue that these expenses should be recalculated. Second, the petitioners state that SIW failed to include certain invoices in its reported movement costs. The petitioners cite the Department's verification report, in which we list several omitted movement charges, and they state that the Department should correct the omissions.

The respondent did not rebut the argument.

Department's Position: We agree with the petitioners. To correct SIW's understatement of movement expenses, we recalculated SIW's international freight expenses and other U.S. transportation expenses by dividing these expenses by the ratio between gross weight and net weight as indicated in the sales verification report. In addition, we included movement expenses for additional invoices discovered at verification. See Sales Verification Report at 33-36 and Analysis Memorandum at 5-6.

3) U.S. Selling Expenses

The petitioners argue that the Department should correct errors and omissions in SIW's U.S. selling expenses that were discovered during the CEP verification of SCT USA. These errors and omissions pertain to SIW's reported indirect selling expense ratio, U.S. inventory carrying cost, payment dates, credit expenses, and U.S. commissions. Again, the petitioners cite the Department's verification report, in which we list the errors and omissions regarding SIW's U.S. selling expenses, and they state that the Department should correct the errors and omissions.

The respondent did not rebut the argument.

Department's Position: We agree with the petitioners and have corrected the errors and omissions in SIW's reported U.S. selling expenses. Specifically, we revised SIW's U.S. indirect selling expense ratio, U.S. inventory carrying cost, and credit expenses. We also included a commission omitted from its U.S. sales database. See Sales Verification Report at 39-41 and Analysis Memorandum at 4-6.

4) U.S. Customs Fee Rates

The petitioners argue that the Department should apply the confirmed U.S. customs fee rates for SIW's U.S. sales. The petitioners believe that SIW incorrectly calculated the customs fee rate which it used to allocate customs expenses. The petitioners refer to the Department's verification report, in which we confirmed that the actual rates for harbor maintenance fees and merchandise processing fees, and they argue that we should rely upon these rates.

The respondent did not rebut the argument.

Department's Position: We agree with the petitioners. Consistent with the methodology used in the preliminary determination, we applied the confirmed rates for harbor maintenance and merchandise processing fees listed on SIW's entry summaries. See Sales Verification Report at 36-37 and Preliminary Analysis Memorandum at 5.

5) Revised CONNUM

The petitioners argue that the Department should correct a sale in SIW's U.S. sales database. The petitioners believe that the CONNUM for one of SIW's U.S. sales is incorrect. The petitioners base this assertion on the product code which was assigned to this product. The petitioners state that the CONNUM must be corrected in order to prevent a mistake in the matching of sales.

The respondent did not rebut the argument.

Department's Position: We agree with the petitioners. Based upon record information, SIW incorrectly coded one of its U.S. sales. The reported CONNUM for this sale does not match the reported product code and weight and length specifications. Therefore, for matching purposes, we have revised the CONNUM for this sale to match the product specifications. See Analysis Memorandum at 3-4.

Comment 5 - Corrections to SIW's Home Market Sales

The petitioners argue that we should make the following four corrections to SIW's home market sales:

1) Indirect Selling Expenses

The petitioners argue that the Department should not allow the indirect selling expenses claimed by SIW with respect to its affiliate because of the limited role that the affiliate plays in the sales process of PC strand.

SIW rebuts the petitioners argument and states that the Department should deduct all selling expenses associated with home market sales because of the activities done by SIW, its affiliated resellers, and the dealers.

Department's Position: As discussed above in Comment 1, we are basing the calculation of normal value on SIW's sales to its affiliated reseller. Therefore, it is unnecessary to address this comment regarding the affiliated reseller's indirect selling expenses.

2) Commissions

The petitioners argue that Department should properly account for the commissions SIW pays to its affiliate. The petitioners state that information obtained at verification indicates that SIW has reported the commissions that it paid to its affiliate as discounts. They refer to verification exhibit 9, stating that it confirms that SIW provides a commission to its affiliate for its services. The petitioners urge the Department to reclassify this expense; otherwise, the commission offset in the dumping calculation will be affected and the dumping margin will be distorted.

The respondent did not rebut the argument.

Department's Position: We disagree with the petitioners. Although verification exhibit 9 indicates that SIW provides a commission to its affiliate for its resales of PC strand to dealers who then sell to end-user customers, SIW correctly reported the amount in question as a discount on its sales to its affiliate. A discount is a reduction in price to a customer, while a commission is a form of payment for services. See Notice of Preliminary Determination of Sales at Less than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 61249 (November 10, 1999); Notice of Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756 (July 19, 1999). As noted above, we consider SIW's sales to its affiliate, which pass the arm's length test, to be sales transactions.

Therefore, the price reductions provided by SIW to its affiliate were properly treated as discounts to a customer.

3) Interest Rate Used in the Calculation of Credit Expenses

The petitioners argue that the Department should adjust the interest rate that SIW used to calculate imputed credit expenses for its home market sales because the rate is overstated.

First, the petitioners maintain that the rate is overstated because SIW included interest expenses for overdrafts in its reported total interest expenses, but failed to include the amount of these overdrafts in the denominator of the calculation. In addition, the petitioners state that including overdraft fees is inappropriate regardless because they are set by banks at high rates in order to deter customers from overdrawing their accounts, and are therefore not typical commercial rates.

Second, the petitioners believe that SIW has overstated the interest rate because SIW included the higher interest rates associated with its loans from Cementhai Steel, a related party. The petitioners reiterate this point by quoting the following from the Department's verification report: "the interest rate incurred on the promissory note to Cementhai Steel is significantly higher than the interest rates incurred on the promissory notes to unaffiliated banks." See Sales Verification Report at 21. The petitioners argue that it is inappropriate to include this significantly higher interest rate because the loans made by Cementhai Steel were not at arm's length and the loans are not normal commercial loans because they could be called at any time.

Finally, the petitioners argue that the interest rate that SIW reported for its home market credit expense is substantially higher than the consolidated interest rate that SIW reported in its cost of production response. They state that while the interest rates may not be identical, there is no basis for such a significant difference.

SIW argues that the Department should continue to use its reported home market credit expenses. SIW first rebuts petitioners' position regarding the overdrafts by stating that these overdrafts should be included because they are, in fact, a form of short-term borrowing. SIW states that the amount of the overdraft is the short-term loan and the overdraft fees are the financing charges. SIW states that while it is impossible to determine the amount of the overdraft to include in the denominator, the overdraft charges should still be included in the numerator. SIW rebuts the petitioners' second point arguing that an on call loan is a short-term loan because it can be recalled anytime. It also states that this type of loan is a line of credit, is part of the routine business operations of companies, and therefore, should not be disregarded.

Finally, SIW argues that petitioners' comments comparing the interest expenses for the cost of production with the interest rate of SIW is inaccurate. It argues that the interest expenses for the cost of production is a ratio of interest expenses to the cost of manufacture, while short term interest rates are a ratio of interest to principal, and the two are not comparable.

Department's Position: SIW incorrectly calculated its credit expenses by including overdraft fees in its total interest expenses, but not including overdraft amounts in the denominator of the interest rate calculation. Information regarding the amount of the overdraft to be included in the denominator is not on the record. In addition, SIW improperly included significantly higher interest rates associated with loans from an affiliated party, Cementhai Steel. Because the loans from the affiliate were taken out at significantly higher rates than the rates obtained from unaffiliated lenders, we determined that they were not reflective of arm's length interest rates, and therefore should not be included in the calculation of credit expenses. Accordingly, we have revised SIW's calculation of credit expenses by excluding the non-arm's length loans and overdraft fees. See Analysis Memorandum at 2.

4) Freight Costs

The petitioners argue that the Department should recalculate SIW's freight costs for sales delivered by an affiliated carrier to reflect an arm's length price for freight services. The petitioners point out that the cost of freight for sales delivered by SIW's affiliated carrier were found to be substantially higher than the cost of freight for sales delivered by the unaffiliated carrier. The petitioners state that the Department compared the freight rate charged to SIW by an unaffiliated carrier to the freight contract rate charged by the affiliated carrier for deliveries to the same location and found that it was lower.

SIW argues that the Department should continue to use SIW's reported home market freight expenses stating that it only used an unaffiliated carrier for two home market transactions which had a different destination than any of the transactions shipped via affiliated carrier, and are thus not comparable. The respondent also states that not only do freight costs differ by destination, but they also differ by type of merchandise, quantity of merchandise, number of stops, applicability period of the contract, as well as other factors, which the petitioner did not take into account.

Department's Position: We agree with the petitioners. As indicated in the verification report, we requested that SIW demonstrate that the freight rates charged by its affiliated freight provider were arm's length prices. It is the Department's policy to require evidence from a respondent that charges for goods or services provided by affiliated parties were made at arm's length. See e.g. Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany, 64 FR 30710 (June 8, 1999).

During the POI, SIW's affiliated freight provider delivered PC strand for all but two sales in the home market. SIW provided the freight documentation related to these two sales, and we noted that these charges were significantly less than the affiliated provider's contract rate. Although SIW's affiliated freight provider did not make any POI deliveries to the location for those two sales, its contract rate for that location as well as an additional nearby location was higher than the unaffiliated provider's rate. See Sales Verification Report at 20. We note that we verified the affiliate's contract rates for other locations and noted no discrepancies. Therefore, because SIW was unable to produce evidence that

the freight rates from its affiliate were comparable to that of an unaffiliated freight provider, we have revised SIW's home market inland freight expenses downwards to reflect prices comparable to that of the unaffiliated freight provider. In addition, SIW's affiliated freight carrier also delivered PC strand destined for the United States

from the plant to the port in Thailand. Therefore, we have also revised SIW's reported freight expenses from the plant to the port to reflect arm's length prices. See Analysis Memorandum at 3.

Comment 6 - Corrections to Errors Contained in the Preliminary Margin Calculation Program

The petitioners argue that we should correct two errors made in the preliminary margin calculation program. First, the petitioners state that the Department should not deduct SIW's billing adjustment for returns from home market prices. And second, the petitioners argue that, due to a programming error, the Department inadvertently failed to deduct SIW's reported commission amounts from U.S. price.

The respondent did not rebut the argument.

Department's Position: We agree with the petitioners. At verification, we found that the billing adjustment field for returns was the per-unit deduction for the amount returned and should not be deducted from home market prices. See Sales Verification Report at 14. Accordingly, we have revised the margin calculation program to correct this error and the programming error related to the deduction of commissions from U.S. price. See Analysis Memorandum at 3 and 6.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the *Federal Register*.

Agree_____

Disagree_____

Let's Discuss_____

James J. Jochum
Assistant Secretary
for Import Administration

Date

